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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 Viral DRM, LLC,

11 Case No: 8:24-cv-00871-FMO-AS

12 Plaintiff,

13 v.
14 **AMDENDED COMPLAINT**
15 **DEMAND FOR JURY TRIAL**

16 Complaint Filed: April 22, 2024

17 California Off Road Recovery
18 Group LLC,

19 Judge: Hon. Fernando Manzano
20 Olguin

21 Defendant.

22 Magistrate Judge: Hon. Alka Sagar

23 Plaintiff Viral DRM, LLC (“*Plaintiff*”), by and through its undersigned
24 counsel, for its Complaint against defendant California Off Road Recovery Group
25 LLC (“*Defendant*”) states and alleges as follows:

26 **INTRODUCTION**

27 1. This action seeks to recover damages for copyright infringement under
28 the Copyright Act, 17 U.S.C. §501.

29 2. Ronald Brian Emfinger (“Emfinger”) created a video showing footage
30 of a tornado hitting the city of Elgin, Texas (the “*Video*”) in which Plaintiff owns
31 the rights and licenses for various uses including online and print publications.

32 3. Defendant is a towing service company which owns and operates an

1 Instagram account with the name “@rhino_offroad_recovery” at domain
2 www.instagram.com (“*Account 1*”).

3 4. Defendant also owns and operates a Facebook account with the name
4 “@SoCal 4x4 Rhino Offroad Recovery, Resue and Towing” at domain
5 www.facebook.com (“*Account 2*”).

6 5. Defendant, without permission or authorization from Plaintiff, actively
7 copied and displayed the Video on Account 1 and Account 2 (hereinafter referred to
8 collectively as the “*Accounts*”) and engaged in this misconduct knowingly and in
9 violation of the United States copyright laws.

10 **PARTIES**

11 6. Plaintiff Viral DRM, LLC is an Alabama limited liability company and
12 maintains its principal place of business in Talladega County, Alabama.

13 7. Upon information and belief, Defendant California Off Road Recovery
14 Group LLC is a California limited liability corporation with a principal place of
15 business at 473 S. Carnegie Drive, Suite 200, San Bernardino in San Bernardino
16 County, California and is liable and responsible to Plaintiff based on the facts herein
17 alleged.

18 **JURISDICTION AND VENUE**

19 8. This Court has subject matter jurisdiction over the federal copyright
20 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

21 9. This Court has personal jurisdiction over Defendant because it
22 maintains its principal place of business in California.

23 10. Venue is proper under 28 U.S.C. §1391(b)(2) because Defendant does
24 business in this Judicial District and/or because a substantial part of the events or
25 omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

A. Plaintiff's Copyright Ownership

11. Plaintiff is a professional videography company which is the legal and rightful owner of certain videos which Plaintiff commercially licenses.

12. Plaintiff has invested significant time and money in building Plaintiff's video portfolio.

13. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the “USCO”) which cover many of Plaintiff’s videos while many others are the subject of pending copyright applications.

14. Plaintiff's videos are original, creative works in which Plaintiff owns protectable copyright interests.

15. On March 21, 2022, Emfinger first published the Video. A copy of the Video is attached hereto as Exhibit 1.

16. In creating the Video, Emfinger personally selected the subject matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used to capture the video recording.

17. On April 22, 2022, the Video was registered by the USCO under Registration No. PA 2-354-516.

18. Emfinger created the Video with the intention of it being used commercially and for the purpose of display and/or public distribution.

19. Emfinger published the Video by commercially licensing it to numerous third-party media and weather companies for the purpose of display and/or public distribution.

20. On March 21, 2022, Michael Brandon Clement (“*Clement*”) and Brett Adair (“*Adair*”) acquired the rights in and to the Video from Emfinger by way of written assignment.

21. Thereinafter, on May 17, 2022, Plaintiff acquired the rights in and to

1 the Video from Clement and Adair by way of written assignment.
2

3 **B. Defendant's Infringing Activity**

4 22. Defendant is the registered owner of the Accounts and is responsible
for their content.

5 23. Defendant is the operator of the Accounts and is responsible for their
content.

6 24. The Accounts are key components of Defendant's popular and lucrative
commercial enterprise.

7 25. The Accounts are monetized in that they promote the business and its
10 services to the public and, upon information and belief, Defendant profits from these
11 activities.

12 26. On or about March 23, 2022, Defendant displayed the Video on
13 Account 1 as part of an Instagram reel at URL:
14 <https://www.instagram.com/reel/CbdJO0rJL82/> ("Infringement 1"). A copy of a
15 screengrab of Account 1 including the Video is attached hereto collectively as
16 Exhibit 2.

17 27. Further, on or about March 23, 2022, Defendant displayed the Video
18 on Account 2 as part of a Facebook reel at URL:
19 <https://www.facebook.com/reel/494553468869577> ("Infringement 2"). A copy of a
20 screengrab of Account 2 including the Video is attached hereto collectively as
21 Exhibit 2.

22 28. Without permission or authorization from Plaintiff, Defendant
23 volitionally copied and displayed Plaintiff's copyright protected Video on the
24 Accounts.

25 29. Plaintiff first observed and actually discovered the Infringements on
26 March 23, 2022.

27 30. Upon information and belief, the Video was copied and displayed by
28

1 Defendant without license or permission, thereby infringing on Plaintiff's copyrights
2 in and to the Video (hereinafter all of the unauthorized uses set forth above are
3 referred to collectively as the "*Infringements*").

4 31. The Infringements include a URL ("*Uniform Resource Locator*") for a
5 fixed tangible medium of expression that was sufficiently permanent or stable to
6 permit it to be communicated for a period of more than a transitory duration and
7 therefore constitutes a specific infringement. *17 U.S.C. §106(5)*.

8 32. The Infringements are exact copies of Plaintiff's original video
9 recording that was directly copied and displayed by Defendant on the Accounts.

10 33. Upon information and belief, Defendant takes an active and pervasive
11 role in the content posted on its Accounts, including, but not limited to copying,
12 posting, selecting, commenting on, and/or displaying video recordings including but
13 not limited to Plaintiff's Video.

14 34. Upon information and belief, the Video was willfully and volitionally
15 posted to the Accounts by Defendant.

16 35. Upon information and belief, Defendant was aware of facts or
17 circumstances from which the determination regarding the Infringements was
18 apparent. Defendant cannot claim that it was not aware of the infringing activities,
19 including the specific Infringements which form the basis of this complaint, since
20 such a claim would amount to only willful blindness to the Infringements on the part
21 of Defendant.

22 36. Upon information and belief, Defendant engaged in the Infringements
23 knowingly and in violation of applicable United States copyright laws.

24 37. Upon information and belief, Defendant has the legal right and ability
25 to control and limit the infringing activities on its Accounts and exercised and/or had
26 the right and ability to exercise such right.

27 38. Upon information and belief, Defendant monitors the content on its
28

1 Accounts.

2 39. Upon information and belief, Defendant has received a financial benefit
3 directly attributable to the Infringements.

4 40. Upon information and belief, the Infringements increased traffic to the
5 Accounts and, in turn, caused Defendant to realize an increase in its business
6 revenues.

7 41. Upon information and belief, a large number of people have viewed the
8 unlawful copies of the Video on the Accounts.

9 42. Upon information and belief, Defendant at all times had the ability to
10 stop the reproduction and display of Plaintiff's copyrighted material.

11 43. Defendant's use of the Video harmed the actual market for the Video.

12 44. Defendant's use of the Video, if widespread, would harm Plaintiff's
13 potential market for the Video.

14 45. As a result of Defendant's misconduct, Plaintiff has been substantially
15 harmed.

16 **FIRST COUNT**

17 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

18 46. Plaintiff repeats and incorporates by reference the allegations contained
19 in the preceding paragraphs, as though set forth in full herein.

20 47. The Video is an original, creative work in which Plaintiff owns a valid
21 copyright.

22 48. The Video is properly registered with the USCO and Plaintiff has
23 complied with all statutory formalities under the Copyright Act and under
24 regulations published by the USCO.

25 49. Plaintiff has not granted Defendant a license or the right to use the
26 Video in any manner, nor has Plaintiff assigned any of its exclusive rights in the
27 copyright to Defendant.

50. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

51. Defendant's reproduction of the Video and display of the Video constitutes willful copyright infringement.

52. Upon information and belief, Defendant willfully infringed upon Plaintiff's copyrighted Video in violation of Title 17 of the U.S. Code, in that Defendant used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, Plaintiff's original and unique Video without Plaintiff's consent or authority, by using it on the Accounts.

53. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for each infringement pursuant to 17 U.S.C. § 504(c).

54. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

55. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

JURY DEMAND

56. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights to the Video in violation of 17 U.S.C. §501 *et seq.* and therefore award damages and monetary relief as follows:

- a. finding that Defendant infringed Plaintiff's copyright interest in and to the Video by copying and displaying it without a license or consent;
- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504(b) in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- e. for pre-judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

DATED: June 13, 2024

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